

Republic of Korea Criminal Jurisdiction

The Republic of Korea Government (ROKG) has criminal jurisdiction over Americans, both civilian and military, within the ROK. This means that the ROKG has the legal authority to prosecute U.S. citizens in Korean courts. The extent of jurisdiction, however, varies depending upon the crime, the victim, and whether the American arrested is a civilian or a soldier.

Soldiers, their dependents, U.S. government employees, and certain other U.S. citizens are protected by varying degrees by the Status of Forces Agreement (SOFA). Whether the ROKG will prosecute the matter or allow the U.S. government to take jurisdiction depends in a large part upon both the nature of the crime and the SOFA status of the criminal.

Most offenses committed by Soldiers are under concurrent jurisdiction, that is, both the military and the ROK have jurisdiction. This means that if a soldier commits a crime against the United States, such as theft of government property, or against a U.S. citizen, such as assault on another soldier, the U.S. government has primary jurisdiction. If the United States chooses not to prosecute, the ROKG may elect to do so. However, because the ROKG has no real interest in these types of cases, it is unlikely to prosecute. Furthermore, the United States has primary jurisdiction over all crimes committed by Soldiers on U.S. military installations. On the other hand, if the Soldier commits a crime against a Korean national or violates a Korean law, such as black-marketing or an off-post hit and run accident, the ROKG has primary jurisdiction.

The ROKG has primary jurisdiction over all other U.S. citizens entitled to SOFA status, such as military dependents or U.S. government employees, regardless of the nature of the offense or where it occurred.

If the ROKG elects to prosecute a soldier or another U.S. citizen protected by the SOFA, it must inform U.S. authorities of that intent in writing. The U.S. citizens then granted certain rights accorded under the SOFA, to include a lawyer paid for by the U.S. government during the prosecution conducted in accordance with Korean law. Sentences to confinement by Korean courts are served in Korean prisons.